Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

WILLIAM B. GOODHEART, M.D.,

Petitioner,

vs.

FRANK DUMONT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

CLYDE A. THOMPSON
REBECCA S. WIDEN
(*Counsel of Record*)
STRICKLAND, HAAPALA, ALTURA, THOMPSON & ABERN, LLP
1939 Harrison Street, Suite 800
Oakland, California 94612
Phone: (510) 763-2324 Fax: (510) 273-8570

Attorneys for Petitioner William B. Goodheart, M.D.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

1. Whether a physician, hired as an independent contractor by county government and fully indemnified by the county, is entitled to assert the defense of qualified immunity in a Section 1983 suit arising out of the performance of his duties for the county in public welfare eligibility proceedings.

2. If so, whether the physician is entitled to qualified immunity from a Section 1983 suit alleging violation of the Fourteenth Amendment right to informational privacy arising out of the county's disclosure of a public assistance applicant's confidential information to interested third parties such as the applicant's treating physicians and other public welfare agencies.

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CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS ENTERED IN CASE

The opinion of the court of appeals (App., *infra*, 1a-2a) is reported at 126 Fed.Appx. 427. The opinion of the district court (App., *infra*, 3a-9a) denying summary judgment is unreported. The three previous opinions of the district court entered in conjunction with this issue (App., *infra*, 10a-13a; 14a-39a; 40a-62a) are unreported.

JURISDICTION

The judgment of the United States Court of Appeal for the Ninth Circuit was entered on April 20, 2005 (App., *infra*, 1a-2a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, sec. 1.

Section 42 U.S.C. section 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law . . . " 42 U.S.C. §1983.

STATEMENT OF THE CASE

This case presents the important, recurring issue of whether a physician hired by the government as an independent contractor to perform essential government activities, with full indemnification by the government, is entitled to assert qualified immunity as a defense to suit under 42 U.S.C. §1983. This issue is important because it affects the ability of government entities to offer indemnity to their individual contractors as an incentive to enter into public service at reasonable rates.

A. Petitioner's Contractual Relationship With Local Government

Petitioner, William B. Goodheart, M.D. ("Goodheart"), an experienced licensed psychiatrist, was hired as an independent contractor by the Marin County Department of Health and Human Services ("the County") to perform psychiatric evaluations of persons applying for public assistance from the Marin County General Assistance program. Goodheart's duties under the contract included providing the County with written opinions on applicants' psychiatric capacity for employment and job training, making recommendations for drug treatment, and providing

consultation services to County eligibility staff as necessary on psychiatric issues (ER 76-86).[1]

During the relevant time frame in 1998, Goodheart had been the County's only psychiatric evaluator for over eight years. The County provided Goodheart with an office, support staff, supplies, equipment, and mileage reimbursement for purposes of conducting his work for the County. Goodheart participated in County staff meetings on a regular basis and was considered to be a valued member of the County's general assistance team (ER 11, ¶8; ER 225). The large majority of Goodheart's professional time was devoted to working for the County. Although Goodheart also maintained a small private office as a sole practitioner, he was only available one day per week for private patients (ER 229, 23-25). Goodheart was not affiliated with any organized physicians' group or other private entity.

Pursuant to the terms of his contract, Goodheart was paid by the County $76.00 per hour up to a yearly maximum of $78,000.00. Goodheart limited his billing to 16 hours per week so as not to exceed the $78,000.00 limit, but he actually worked many more hours than he billed in order to meet the County's needs (ER 221). Goodheart's contract required the County to indemnify and defend him from any risk of liability arising out of his work for the County (ER 222, ll. 8-14; ER 81, ¶6). Accordingly, Goodheart was provided with general and professional liability coverage at the County's expense, which consisted of a

[1] "ER" refers to the Appellant's Excerpts of Record In Support Of Opening Brief filed below in the Ninth Circuit Court of Appeals, case no. 04-16337.

self-insured retention of $100,000, a $1.1 million layer of excess coverage through CSAC Excess Insurance Authority (a shared risk pool among 46 California counties with premiums based on claims history), and another layer of excess coverage through a commercial policy. Goodheart did not maintain any private coverage for his government work.

B. Nature Of Litigation And Results Below

Respondent, Frank DuMont ("DuMont") received public assistance benefits through the County's general assistance program on an intermittent basis between 1996 and 1998. In 1998, as part of the County's continuing eligibility process, DuMont was required to undergo a psychiatric evaluation to determine whether he had any psychiatric disability that would entitle him to benefits. Goodheart performed the evaluation, and on October 28, 1998, he provided the County with a written report of that evaluation ("the report"). DuMont believed the report contained false statements and unfounded opinions about him.

In April 2000, DuMont filed suit in state court against Goodheart, the County, and others seeking damages for the creation of the report and its subsequent disclosure to DuMont's treating physicians and the Social Security Administration (an agency from which DuMont was also seeking public assistance at the time). DuMont subsequently amended his complaint to include a federal civil rights claim under 42 U.S.C. §1983 for violation of his constitutional right to privacy under the Fourteenth Amendment. Defendants thereafter removed the action to

the U.S. District Court for the Northern District of California ("district court") pursuant to 28 U.S.C. §1441(b).

After a series of motions in district court, all defendants except Goodheart were dismissed from the case on statute of limitations grounds. Goodheart then filed a motion for summary judgment, asserting in relevant part that he was entitled to qualified immunity on plaintiff's federal privacy claim. Goodheart argued that he was entitled to qualified immunity because DuMont had not established a violation of the federal right to privacy, and because the law was not clearly established in 1998 as to what kinds of legitimate government purposes would support a constitutionally permissible disclosure of a public assistance applicant's confidential information to interested third parties. DuMont argued, in response, that Goodheart was not entitled to claim qualified immunity because he was a private party and not a public official.

The district court denied Goodheart's assertion of qualified immunity, finding that all issues concerning DuMont's federal privacy claim were "shrouded in genuine issues of material fact" (App., *infra*, 6a). The district court granted summary judgment in Goodheart's favor, however, with respect to all of DuMont's remaining claims for defamation, intentional infliction of emotional distress, and invasion of privacy under the California constitution (App., *infra*, 6a-9a).

Goodheart appealed the district court's denial of qualified immunity on the federal privacy claim to the Ninth Circuit Court of Appeals under the authority of *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) and 28 U.S.C. §1291. After briefing and oral argument by the parties, the Ninth Circuit affirmed on alternate grounds than those

relied upon by the district court, and did not reach the merits of Goodheart's assertion of qualified immunity. In a brief, unpublished memorandum opinion the Ninth Circuit held, in pertinent part: "This Court's prior precedent, *Jensen v. Lane County*, 222 F.3d 570 (9th Cir. 2002), in which we held that a government-contracted psychiatrist affiliated with a private firm was not categorically entitled to qualified immunity, controls the outcome of this case" (App., *infra*, 2a). The Ninth Circuit went on to state that Goodheart may be able to assert a good faith defense at trial (App., *infra*, 2a).

The Ninth Circuit did not discuss its reasons for finding *Jensen* controlling. In *Jensen*, the Ninth Circuit held that a psychiatrist who was employed by a large private firm providing medical services to a county hospital was not entitled to claim qualified immunity under *Richardson v. McKnight*, 521 U.S. 399, 413 (1997). The Ninth Circuit reasoned that the private firm that employed the psychiatrist was subject to the exact same "market forces" that barred application of qualified immunity in *Richardson*. *Jensen* at 578-79. By relying on *Jensen* in wholesale fashion to decide the present case, the Ninth Circuit implicitly rejected Goodheart's argument that market forces were not present because Goodheart is an individual, indemnified by the government, and not affiliated with any private firm.

C. The Public Cost Of Litigation

Goodheart's defense costs are over $500,000.00 in this case to date, and this amount does not include trial costs or any damages ultimately awarded. Because of the County's duty to indemnify Goodheart, all of these costs